

WATER RIGHTS ADJUDICATION ACT

CHAPTER 45⁵⁴

S. B. No. 92

An Act providing for the recordation of certain claims of water rights and imposing limitations on the exercise of such claims; providing for the adjudication and administration of water rights; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Short title

Section 1. This Act may be cited as the Water Rights Adjudication Act.

Definitions

Sec. 2. As used in this Act:

“Section” and “Subsection” refer to parts of this Act.

“Person” means any individual, firm, association, organization, partnership, business trust, public or private corporation, company or political subdivision of the state, agency of the state, the United States, or any other legal entity.

“United States” means the United States of America, and in relation to any particular matter includes the officers, agents, employees, agencies or instrumentalities authorized to act in relation thereto.

“Commission” means the Texas Water Rights Commission.

“Water right” means a right under the laws of the State of Texas to impound, divert or use public waters of the state.

“Certified filing” means a record of appropriation filed with the Board of Water Engineers under the provisions of Section 14 of Chapter 171, Acts of the 33rd Legislature of Texas, 1913, and amendments thereof.

“Permit” means a permit to appropriate public water issued by the Texas Water Rights Commission or its predecessors or successors in interest.

Declaration of policy

Sec. 3. It is declared that the conservation and best utilization of the water resources of this state are a public necessity and it is in the interest of the people of the state to require recordation with the Commission of claims of water rights which are presently unrecorded, to limit the exercise of such claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface water resources of the state may be put to their greatest beneficial use. Therefore, the enactment of this Act is in furtherance of the public rights, duties and functions above set forth and in response to the mandate expressed in Section 59 of Article XVI of the Constitution of Texas and is in the exercise of the police powers of the state in the interest of the public welfare.

Recordation and limitation of certain water right claims

Sec. 4. (a) This Section applies to all claims of riparian water rights, all claims under Article 7500a, Revised Civil Statutes of Texas, 1925, to impound, divert or use public waters of the state for other than domestic

54. Vernon's Ann.Civ.St. art. 7542a, §§ 1-14.

or livestock purposes for which no permit has been issued, all claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended, and all other claims of water rights other than claims under permits or certified filings.

(b) Any claim to which this Section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where any claimant of a riparian right has prior to the effective date of this Act commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, such right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming any water right to which this Section applies shall file with the Commission a statement setting forth the name and address of the claimant, the location and the nature of the right claimed, the stream or watercourse and the river basin in which the right is claimed, the date of commencement of works, the dates and volumes of use of water, together with such other information as may be required by the Commission to show the nature and extent of the claim. Each claimant or owner shall be required to certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief. Any claimant desiring recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) shall file an additional sworn statement on or before July 1, 1971. The Commission shall prescribe forms for the sworn statements, but use of Commission forms shall not be mandatory. On or before January 1, 1968, and June 1, 1969, the Commission shall cause notice of the requirements of this Section to be published once each week for two (2) consecutive weeks in newspapers having general circulation in each county of the state and by first class mail to each user of surface water who has filed a report of water use with the Commission. Upon sworn petition, notice and hearing in the manner prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the Commission may authorize the filing of the sworn statement or statements required by this subsection until entry of a preliminary determination of claims of water right in accordance with Section 5(d) of this Act which includes the area described in the petition or September 1, 1974, if a preliminary determination has not been entered.

(d) The filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state; therefore, failure to file the sworn statement or statements with the Commission in substantial compliance with this Section shall extinguish and bar any claim of water rights to which this Section applies, and thereafter no such right shall be recognized. The sworn statements required by this Section shall be binding on the person submitting the statement and his successors in interest but shall not be binding on the Commission or any other person in interest. Nothing herein shall be construed to recognize any water right which did not exist prior to the effective date of this Act. This Section shall not apply to use of water for domestic or livestock purposes.

Adjudication of water rights

Sec. 5. (a) The water rights in any stream or segment thereof may be adjudicated as provided in this Act upon the Commission's own motion

or upon a petition to the Commission signed by ten (10) or more claimants of water rights from the source of supply or upon petition of the Texas Water Development Board. Promptly after the filing of a petition, the Commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest. If the Commission finds that an adjudication would be in the public interest, it shall enter an order to that effect designating the stream or segment to be adjudicated and directing an investigation to be made of the area described to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the Commission's office. In connection with the investigation, the Commission shall make a map or plat showing with substantial accuracy the course of the stream or segment, the location of reservoirs, diversion works and places of use including lands which are being irrigated or have facilities for irrigation.

(b) The Commission shall prepare a notice of adjudication which shall describe the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the Commission, which date shall not be less than ninety (90) days after notice is issued as hereinafter provided. The notice shall be published each week for two (2) consecutive weeks in one (1) or more newspapers having general circulation in the counties in which such stream or segment is located. Notice shall also be given by certified mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated insofar as such claimants can reasonably be ascertained from the records of the Commission. Every person claiming a water right of any nature whatsoever, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the Commission within the time prescribed in the notice, including any extensions thereof, setting forth the name and post office address of the claimant, the location and nature of the right claimed including a description of any permit or certified filing under which the claim is made, the purpose of use, a description of works and irrigated lands, if any, and all other information necessary to show the nature and extent of the claim. The Commission shall prescribe forms for claims, but use of Commission forms shall not be mandatory.

(c) The Commission shall set a time and place for hearing all claims. Not less than thirty (30) days prior to the commencement of such hearings, the Commission shall give notice thereof by certified mail to all persons who have filed claims in accordance with the preceding subsection or this notice may be included in the notice of adjudication provided in Subsection (b). The hearings shall be conducted as provided in Section 9 of this Act.

(d) Upon completion of the hearings, the Commission shall make a preliminary determination of the claims to water rights under adjudication. One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Subsection (b). Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the Commission. Copies shall also be made available to other interested persons at reasonable cost, based on the cost of reproduction. All evidence presented to or considered by the Commission shall be open to public inspection for a period of not less than sixty (60) days, as fixed by the Commission, after the notice prescribed in this subsection is issued. The Commission shall also set a date for filing contests on the preliminary determination, which date shall not be less

than thirty (30) days after the period for public inspection of the evidence presented to or considered by the Commission has closed. Promptly after the preliminary determination has been made, notice of the fact shall be published each week for two (2) consecutive weeks in one (1) or more newspapers having general circulation in the river basin in which the stream or segment is located. Notice shall also be sent by certified mail to each claimant of water rights within the river basin in which the stream or segment is located, insofar as such claimants can be reasonably ascertained from the records of the Commission. Each notice shall also state the place and the period of time that the preliminary determination and evidence presented to or considered by the Commission will be open for public inspection, the locations throughout the river basin where copies of the preliminary determination will be available for public inspection, the method of ordering copies of the preliminary determination and the charge therefor, and the date by which contests on the preliminary determination must be filed.

(c) If any water right claimant affected by the preliminary determination, including claimants to water rights within the river basin but outside the stream or segment under adjudication, disputes the preliminary determination, he shall within the time for filing contests prescribed in the notice, including any extensions thereof, file a written contest with the Commission, stating with reasonable certainty the grounds of his contest, which statement shall be verified by the affidavit of the contestant, his agent, or attorney. If the contest is directed against the preliminary determination of the rights of other claimants, a copy shall be served on each such claimant or his attorney by certified mail, and proof of service shall be filed with the Commission. After the time for filing contests has expired the Commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of hearing of the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located insofar as such claimants can reasonably be ascertained from the records of the Commission. The hearing shall be conducted as provided in Section 9 of this Act.

(f) Upon completion of hearings on all contests the Commission shall make a final determination of the claims to water rights under adjudication. A copy of the final determination and any modification thereof shall be sent to each claimant whose rights are adjudicated and each contesting party. Within thirty (30) days from the date of the final determination any affected party may apply to the Commission for a rehearing. Applications for rehearing which in the opinion of the Commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and each contesting party.

(g) As soon as practicable after the disposition of all applications for rehearing, the Commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the Commission, in a district court of any county in which the segment under adjudication is located; provided, however, if the segment under adjudication includes all or parts of three or more counties and if petitioned to do so by ten (10) or more affected persons who appeared in the proceedings, the Commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication. The Commission shall obtain an order from the court fixing a time not less than thirty (30) days from the date of such order for the filing of exceptions to the final determination and

fixing a time not less than sixty (60) days from the date of such order for the commencement of hearings on exceptions. The Commission shall immediately give written notice of such order by certified mail to all parties who appeared in the proceedings before the Commission, and proof of such service shall be filed with the court.

(h) Any affected person who appeared in the proceeding before the Commission may file exceptions to the final determination which exceptions shall state with a reasonable degree of certainty the grounds for the exception and shall specify the particular paragraphs and pages of the determination to which exception is taken. Three (3) copies of such exceptions shall be filed in court, and a copy shall be served on the Commission. The Commission shall make copies of all exceptions available at reasonable cost, based upon the cost of reproduction.

(i) The court shall hear any exceptions which have been filed, and the Commission and all affected persons appearing in the proceedings before the Commission shall be entitled to appear and be heard on the exceptions. Other parties in interest may be permitted to appear and be heard by leave of court for good cause shown. The court shall have the power to conduct non-jury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside of its judicial district shall be taxed as costs.

(j) In passing on exceptions the court shall determine all issues of law and fact independently of the Commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the Commission's attention by application for rehearing, nor shall the court consider any issue of fact raised by an exception unless the record of evidence before the Commission reveals that the question was genuinely in issue before the Commission. Any party in interest may demand a jury trial of any such issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue or issues. The Legislature hereby specifically declares that the provisions of this subsection shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this subsection. If this subsection is for any reason ever held by the courts to be invalid, unconstitutional or inoperative in any way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect.

(k) Any exception heard by the court without a jury may be resolved on the record of evidence before the Commission, or the court may in its discretion take additional evidence or direct that additional evidence be heard by the Commission. After final hearing the court shall enter a decree affirming or modifying the order of the Commission and may assess such costs as it may deem just. Appeal may be taken from the decree in the same manner and with the same effect as in other civil cases. The final decree in every water right adjudication shall be final and conclusive as to all existing and prior rights and claims to water rights in the adjudicated stream or segment and shall be binding on all claimants to water rights within the river basin, including claimants to water rights outside the adjudicated stream or segment. Except for domestic and livestock purposes or rights subsequently acquired by permit, no water right shall be recognized in the adjudicated stream or segment unless included in the final decree.

(l) Upon the final determination of the rights to the waters of any stream and the expiration of the time for rehearing provided in Section (k) hereof, the Commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the Chairman and

affixed with the seal of the Commission. The certificate of adjudication shall refer to the final decree of adjudication to which it relates and shall state the name and postoffice address of the holder of the adjudicated right, the priority, extent, and purpose of the right, and if for irrigation purposes, a description of the irrigated land, together with all other information relating to the adjudicated right contained in the final decree.

(m) The certificate of adjudication or a true copy shall be transmitted by the Commission to the county clerk of each county in which the appropriation is made. Upon receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the same in a well-bound book provided and kept for that purpose only, and shall index the same alphabetically under the name of the holder of the certificate of adjudication and of the stream or source of water supply, and, thereupon, shall deliver the certificate of adjudication, upon demand, to the holder.

Permits issued after adjudication

Sec. 6. Permits, other than temporary permits, issued by the Commission to appropriate water from an adjudicated stream or segment shall be subject to administration in the same manner as provided in this Act for an adjudicated water right.

Abatement of certain civil actions

Sec. 7. Nothing in this Act shall prevent or preclude any person claiming the right to divert water from a stream from filing and prosecuting to conclusion a suit against other claimants of the right to divert or use water from the same stream; provided, however, that if the Commission has ordered a determination of water rights as provided in Section 5 of this Act, or if the Commission shall order such a determination within ninety (90) days after notice of the filing of such a suit, the suit shall be abated on motion of the Commission or any party in interest as to any issues involved in the water rights determination, except that the court may grant or continue any temporary relief necessary to preserve the status quo pending final determination of the water rights involved.

Administration of water rights

Sec. 8. (a) The Commission shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time, as the necessity therefor arises, and shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

(b) One watermaster may be appointed by the Commission for each water division. The watermaster shall hold office until a successor is appointed and may be removed at any time by the Commission. The Commission may employ assistant watermasters and other employees necessary to aid the watermaster in the discharge of his duties. In any water division in which the office of watermaster is vacant, the Commission shall have the powers and authority of a watermaster. The watermaster shall perform his duties under the general direction and supervision of the Commission and shall be responsible to the Commission for the proper performance of his duties. Any person dissatisfied with any action of a watermaster may apply to the Commission for relief.

(c) It shall be the duty of the watermaster to divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights, and to regulate or cause to be regulated the con-

trolling works of reservoirs and diversion works in time of water shortage, as may be necessary by reason of the rights existing in the streams of his division, or as may be necessary to prevent the waste of water or its diversion or taking or storage or use in excess of the quantities to which the holders of water rights are lawfully entitled. The watermaster shall also have authority to regulate the distribution of water from any system of works that serves users whose rights have been separately determined. Whenever, in the performance of his duties, the watermaster regulates diversion works or the controlling works of reservoirs, it shall be his duty to attach to such diversion works or controlling works a written notice properly dated and signed, setting forth the facts that such diversion works or controlling works have been properly regulated and are wholly under his control, and such notice shall be legal notice to all parties interested in the diversion and distribution of the water served by such diversion works or reservoir.

(d) The compensation and necessary expenses of a watermaster, assistant watermasters and other necessary employees shall be paid by the Commission, and the Commission shall be reimbursed for such compensation and expenses by the holders of water rights that have been determined or adjudicated and whose rights are so administered. The Commission, after the adjudication decree becomes final, shall notify each holder of water rights under the decree of the amount of compensation and expenses that will be required annually for the administration of the water rights so determined. Following a public hearing under the provisions of Section 9, the Commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The Commission order shall equitably apportion costs; it may provide for payments in installments and shall specify the dates by which payments shall be made to the Commission. The Commission shall transmit all collections to the State Treasurer. No water shall be diverted, taken or stored by or delivered to any person while delinquent in the payment of his assessed costs. Each order assessing costs shall remain in effect until further order of the Commission and may be modified, revoked or superseded by subsequent order of the Commission. Supplementary orders may be issued from time to time to apply to new diversions.

(e) The owner of any works for the diversion or storage of water shall maintain to the satisfaction of the Commission a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, of such construction that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound, the suitability of such outlet to be determined by the Commission. The owner of any works for the diversion or taking, or storage, or distribution of water, when required by the Commission, shall construct and maintain suitable measuring devices at such points as will enable the watermaster to determine the quantities of water to be diverted or taken, or stored or released, or distributed, in order to satisfy the rights of the respective users thereof. The Commission may order flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property. If the owner of any such works shall refuse or neglect to comply with the directions of the Commission, as provided in this Section, the Commission after ten (10) days notice or such additional time as shall be reasonable under the circumstances, may order the watermaster to make such adjustment of the control works as will prevent the owner of the works from diverting or taking or storing or distributing any of the water to which he

would otherwise be entitled until he shall have made full compliance with the order of the Commission.

(f) Any person injured by the exercise of the duties prescribed by this Act may bring suit against the Commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this Act, an injunction shall be issued only if it is shown that the Commission has failed to carry into effect the decree adjudicating the water right involved.

(g) In any area in which water rights of record in the office of the Commission have not been adjudicated, the holders or claimants of such rights and the Commission may enter into a written agreement for their administration. The agreement shall provide the basis and manner of distribution of the waters to which the agreement relates; the services of a special watermaster, and assistants if necessary, to carry out the agreement; and the allocation, collection and payment of the annual costs of administration; and shall be recorded in the offices of the Commission and of the county clerk of each county in which any of the works or lands affected by the agreement are located. The administration of water rights under any such agreement shall be governed by the provision of this Section other than Subsection (d). No such agreement shall impair any vested right to the use of water nor create any additional rights to the use of any water.

Notice and procedure

Sec. 9. Notice of any hearing or other proceeding ordered by the Commission pursuant to this Act shall be given in the manner prescribed in the Rules and Regulations of the Commission unless otherwise specifically provided for in this Act. In any proceeding in any part of the state, the Commission shall have the power to take evidence, including the testimony of witnesses; to administer oaths; to issue subpoenas and compel the attendance of witnesses; which subpoenas shall be served in the same manner as subpoenas issued out of the courts of the state; to compel witnesses to testify and give evidence; to order the taking of depositions and issue commissions therefor in the same manner as depositions in civil actions. The evidence may be taken by a duly appointed reporter before the Commission or its authorized representative who also shall have the power to administer oaths. Witnesses shall receive the same fees and mileage as witnesses in civil actions, to be paid by the party calling such witnesses. Fees and mileage of witnesses called by the Commission shall be paid out of funds made available to the Commission by the Legislature. In case of neglect or refusal on the part of any person to comply with any order or subpoena issued by the Commission, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, he shall be punished in the manner provided by law for such disobedience in civil actions, upon application therefor by the Commission to a district court of the county in which the proceeding is held. The Commission may adjourn the proceedings from time to time and from place to place, and upon the conclusion of the proceeding, it shall render a decision as to the matters concerning which the proceeding was held.

Cancellation of water rights

Sec. 10. Nothing in this Act shall recognize any abandoned or cancelled water right or impair in any way the power of the Commission under general law to forfeit, cancel or find abandoned any water right, including adjudicated water rights.

Groundwater not affected

Sec. 11. This Act shall not apply to underground water as defined in Acts 1925, 39th Legislature, Chapter 25, as amended by Acts 1949, 51st Legislature, Chapter 306 (codified as Article 7880-3c, Section A(3)).

Savings clause

Sec. 12. No action or proceeding commenced prior to the effective date of this Act, and no right accrued save and except those specifically provided for herein, shall be affected by its enactment.

Severability

Sec. 13. If any provision of this Act or the application thereof to any person or circumstances, is held to be unconstitutional, the remainder of the Act, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

Repealer

Sec. 14. All laws or parts of laws in conflict herewith are repealed to the extent of such conflict only.

Emergency clause

Sec. 15. The fact that the present laws relating to the adjudication and administration of surface water rights in Texas are inadequate, and the fact that there is a need for procedures to insure the fair and equitable administration of rights to those waters create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended; and that this Act shall take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on March 13, 1967, by a viva voce vote; April 6, 1967,

Senate concurred in House amendments by a viva voce vote; passed the House on April 5, 1967, with amendments, by a non-record vote.

Approved April 13, 1967.

Effective Aug. 28, 1967, 90 days after date of adjournment.

WEST GRAYSON HOSPITAL DISTRICT
CHAPTER 46⁵⁵**H. B. No. 101**

An Act providing for the creation of West Grayson Hospital District over a portion of Grayson County, Texas, prescribing a procedure for an election on the creation of the district and the levy of a tax in an amount not to exceed 75 cents on the \$100 valuation for its maintenance, support, and payment of indebtedness; providing the powers of the district and its governing body and its procedures in the governing of said district; enacting other provisions incident and related to the subject and purpose; providing for severability; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. In accordance with the provisions of Section 9, Article IX, Constitution of the State of Texas, this Act shall be operative so as to

^{55.} Vernon's Ann.Civ.St. art. 4494q, note,

§§ 1-22.